

Award No. 6705
Docket No. MW-6729

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

J. Glenn Donaldson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SOUTHERN PACIFIC COMPANY (Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the effective Agreement when it abolished the position of Painter Foreman and assigned Painters to work under the supervision of a Carpenter Foreman in the Sacramento shop area;

(2) That Painter Foreman Page Rodems be paid the difference between what he has received at the Painter's rate of pay and what he would have received had he been assigned as Painter Foreman, retroactive to December 1, 1950.

EMPLOYES' STATEMENT OF FACTS: Prior to November 30, 1950, Mr. Page Rodems was assigned as Foreman of Paint Gang No. 14.

Effective as of the close of the work day, November 30, 1950, Paint Gang No. 14 was abolished and Mr. Rodems and other members of the gang were advised that they could exercise their seniority and place themselves as Painters in Bridge and Building Gang No. 11. Mr. Rodems complied with these instructions as of December 1, 1950.

The effective Agreement as amended, provides for the establishment of three groups of employes in the Bridge and Building Sub-department. The groups are as follows:

"Group 1

Class 1. B&B Foremen.
Class 2. Assistant B&B Foremen.
Class 3. Fence Gang Foremen.
Class 4. Mechanics.
Class 5. Helpers.

Group 2

Class 1. Painter Foremen.
Class 2. Assistant Painter Foremen.
Class 3. Painters.
Class 4. Helpers.

and acquiescence in a long established practice, petitioner contends that painters in the Bridge and Building Sub-Department may not be placed in a gang supervised by a Bridge and Building Foreman.

Rules 18 and 19 of the current agreement read as follows:

"Rule 18—New positions and vacancies will be bulletined within thirty (30) days previous to or following the dates such vacancies occur, except that temporary vacancies need not be bulletined until the expiration of ninety (90) days, unless it is known that the vacancy will exceed ninety (90) days.

"Rule 19—Promotions to new positions, or to fill vacancies, will be made after bulletin notice has been posted for a period of ten (10) days at the headquarters of the gangs in the sub-department of employes entitled to consideration in filling the positions, during which time employes may file their applications with the official whose name may appear on the bulletin. The appointment will be made before the expiration of thirty (30) days from the date the bulletin is posted, and the name of the employe selected will then be bulletined. New positions or vacancies may be filled temporarily, pending permanent appointment."

By their very context, it is evident that Rules 18 and 19 lend no support to the instant claim.

The petitioner is simply attempting to secure through an award of this Division an agreement provision over and above that which was agreed to by the parties. Inasmuch as the petitioner's position cannot be sustained by any rules of the agreement or Memorandum of Agreement in connection therewith, and as the carrier's action is in conformity with long-standing practice thereunder, the carrier respectfully submits that, within the meaning of the Railway Labor Act, the instant claim involves request for change in agreement, which is beyond the purview of this Board. To accept petitioner's position in this docket would definitely be tantamount to writing into the agreement a provision which does not appear therein and was never intended by the parties.

CONCLUSION

The carrier asserts that it has conclusively established that the claim in this docket is without basis or merit and, therefore, respectfully submits that it is incumbent upon this Division to deny the claim.

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: (The position of Paint Gang No. 14 was abolished on November 30, 1950, and the Foreman and his gang were advised to exercise seniority to place themselves as painters on B. & B. Gang No. 11.) Claimant, foreman, complied with these instructions as of December 1, 1950.

Article 1, the Scope Rule, expressly names the position of Painter Foreman. Rule 1 provides that seniority begins at the time the employe's pay starts in the class in which employed. Rule 3 confines seniority rights to the sub-department in which employed. Rule 5 provides that seniority of employes in the sub-department shall be carried by classes.

In 1935, a Memorandum of Agreement establishing groups and classes in the B. & B. Sub-Department and the seniority rights of employes therein was negotiated whereby the parties agreed in part as follows:

"(1) It is agreed that effective January 1, 1936, in the application of Rules 1, 3, 4, 5 and 9, and interpretations of said rules of the Maintenance of Way current Agreement, the B&B Sub-Department shall consist of three groups, to be known as Groups 1, 2 and 3 respectively; the classes in each group shall be as hereinafter provided:

GROUP 1

- Class 1. B&B Foremen
- Class 2. Asst. B&B Foremen
- Class 3. Fence Gang Foremen
- Class 4. Mechanics
- Class 5. Helpers

GROUP 2

- Class 1. Painter Foremen
- Class 2. Asst. Painter Foremen
- Class 3. Painters
- Class 4. Helpers

GROUP 3

All occupations not specifically mentioned in Groups 1 and 2—each occupation to constitute a class."

Our attention is also called to Rule 4, by the Employes, which rule reads:

"Except as provided in Rule 21, when force is reduced, the senior man in the sub-department and class, on the seniority district, capable of doing the work, shall be retained."

and the Employes contend that Claimant was the senior qualified employee in the Painter Foreman's class and should have been retained in that capacity. (They further contend that Carrier's action in assigning painters to work under the Bridge and Building Foreman violated seniority provisions of the Agreement. The Carrier concedes that when a position of Painter Foreman is established that an employee with seniority as such is entitled thereto. However, Carrier contends that there is no provision in the Agreement which requires that Painters work under the supervision of a Painter Foreman and that practice has long been to the contrary.) It asserts further that on November 30, 1950, the work program for Claimant's paint gang had been completed and that there was no position of Painter Foreman on which Claimant could displace. Further, that he placed himself on the B. & B. gang, where two other painters were already assigned; that his duties as painter consisted of sign painting, miscellaneous repair jobs, and installation of glass in windows.

As stated, Rule 3 provides that seniority rights of all employees are confined to the sub-department in which employed. The Bridge and Building Sub-Department is one of six under the Agreement. Under the aforementioned Agreement of 1935, it is provided that transfer from one class to another or from one group to another (whether the same sub-department) will not cause forfeiture of seniority in the class or group from which transferred. From a reading of this Special Agreement and the correspondence which proceeded it, the intent of the parties, we find, in adopting the Memorandum of Agreement was to implement Rule 9 concerning force reductions so that it would have uniform application. The following examples were given by way of illustrating the operation of the proposal, later adopted. From Carrier's Exhibit D we read:

"* * * and that in the application of Rule 9 the exercise of seniority would be restricted to the respective sub-divisions, and to the classes under such divisions. In other words, if a Painter Foreman accrued the right of displacement, his privileges under Rule 9 would be enforceable only against the four classes in that sub-division,* * *."

Changes were suggested by the Employes in the make-up of the classes including the creation of a separate painters' class. They then took the position that "Painter Foremen, Painters, and Painter Helpers have always been separate from Bridge and Building forces, and the exercise of seniority rights have been confined to these classes within themselves." Other language in the correspondence and Memorandum of Agreement supports the view that the same was aimed solely to render more equitable the application of the reduction in force rule and nothing appears to intimate an intention to accomplish what the Employes here seek. Hence the classifications in themselves, and the Memorandum of Agreement which brought them into being, gave no rights to insist upon any certain composite in forces and the Carrier's right to arrange its forces and determine what supervision was necessary, continued unimpaired.

We are not here concerned with the taking of work out from under one agreement and placing it under another. Simply, that with a diminution of work the further need of special supervision disappeared and the work was combined under another foreman subject to the same agreement. We have recognized Carrier's rights in this regard in Awards 5149, 4992, and 4235 among others.

Rule 4 deals with seniority and nothing therein requires the Carrier to retain a foremanship position when it determines none is needed.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 9th day of July, 1954.